

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

P R O C E D U R E S
GOVERNING THE APPOINTMENT OF FEDERAL PUBLIC DEFENDERS

September 12, 1989

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And As Further Amended September 1994

CHAPTER I. PURPOSE

Congress has determined that "[t]he Federal Public Defender shall be appointed for a term of four years," 18 U.S.C. § 3006A. Congress has also provided that "[t]he appointment shall be made by the court of appeals of the circuit . . . after considering recommendations from the district court or courts to be served." *Id.* Section 3006A does not prohibit appointment of a Federal Public Defender to additional four-year terms.

The United States Federal Public Defenders exercise important powers and responsibilities as officers of the United States Courts. It is imperative that highly qualified individuals be selected and retained as public defenders. For the expeditious and orderly achievement of this end, as well as to ensure that Federal Public Defenders provide competent, independent counsel and vigorous representation to indigent persons, the United States Court of Appeals for the District of Columbia Circuit has adopted the procedures set forth below. These procedures shall be administered by the Criminal Justice Committee of the Court of Appeals ("Criminal Justice Committee").

CHAPTER 2. FEDERAL PUBLIC DEFENDERS

To be qualified for appointment for a four-year term as a Federal Public Defender, applicants must:

A. be members in good standing of at least one state bar, or the District of Columbia bar, or the bar of a territory or possession;

B. have been engaged in the active practice of criminal law for a period of at least five years, preferably with significant federal criminal trial and appellate experience;

- C. possess the ability to administer a Federal Public Defender's office effectively;
- D. possess, and have a reputation for:
 - 1. integrity and good character;
 - 2. the physical and mental health necessary to perform the responsibilities of the office;
 - 3. commitment to equal justice under law and vigorous representation of his or her client;
 - 4. outstanding legal ability and competence (evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, familiarity with courts and court processes);
- E. have a commitment to the vigorous representation of those unable to afford counsel; and
- F. not be related by blood or marriage to a judge of the United States Court of Appeals for the District of Columbia Circuit or to a judge of the District Court for the District of Columbia, within the degrees specified in section 458 of Title 28, United States Code at the time of the initial appointment.

The Criminal Justice Committee will resolve any questions regarding the qualifications of applicants.

CHAPTER 3. APPOINTMENTS ARE TO FOUR-YEAR TERMS

Section 3.01 - Applications by Federal Public Defender for Additional Four-Year Terms

Section 3006A provides that the Court of Appeals shall appoint a person to serve as Federal Public Defender to a four-year term. The statute does not prohibit appointment

to additional four-year terms. Appointment to a four-year term, however, does not create a legitimate expectation of a right to reappointment.

Approximately one year prior to expiration of the four-year term of office, the Administrative Office of the United States Courts advises the Chief Judge of the Court of Appeals of the expiration date of each four-year term. Upon receipt of this notice, the Chief Judge of the Court of Appeals shall write to the Federal Public Defender to inquire whether he or she intends to apply for appointment to an additional four years at the expiration of his or her term of office. The expiration date of a four-year term is the day prior to the fourth anniversary of the date the oath of office was administered. The Administrative Office of the United States Courts determines the precise expiration date of a four-year term of office.

The Federal Public Defender shall notify the Chief Judge of the Court of Appeals whether he or she wishes to apply for an additional four-year term. Such application shall be accompanied by a written statement prepared by the Federal Public Defender setting forth an evaluation of his or her administration of the Office of the Federal Public Defender. This statement shall assess the strengths and weaknesses of his or her administration of the Office of the Federal Public Defender and the steps that should be taken to eliminate any deficiencies and strengthen the administration of the Office.

Section 3.02 - Notice to Other Applicants That Federal Public
Defender is Seeking Appointment to an Additional Four-Year
Term

The public requirements set forth in Section 4.01 shall advise all applicants that the United States Court of Appeals for the District of Columbia Circuit encourages applications from all qualified persons including women, members of minority groups, and individuals with non-interfering handicaps and that the Merit Screening Committee is searching for the best qualified person currently available for this position. If the Federal Public Defender has applied for an additional four-year term, the notice shall also state that the Federal Public Defender has applied for reappointment.

CHAPTER 4. PUBLIC RECRUITMENT FOR THE OFFICE OF THE FEDERAL PUBLIC DEFENDER

During the last six months of each four-year term or when a vacancy occurs due to the resignation, removal, or incapacity of the Federal Public Defender, a public notice shall be issued announcing that applications are being accepted for a four-year term for the position of Federal Public Defender. The Criminal Justice Committee will seek qualified applicants who reflect the make-up of all such persons in the relevant national labor market and will use adequate means to publicize the existence of a vacancy to all segments of the relevant national labor market.

Section 4.01 - Public Notice

A. The Criminal Justice Committee shall publish a notice that applications are being accepted for a four-year term as Federal Public Defender in a national publication for the legal profession.

B. Whenever possible, the Criminal Justice Committee should advertise in publications from each of the following categories:

1. neighboring bar journals, newsletters, or similar publications;
2. general local newspapers or similar publications;

and,

3. local bar journals, newsletters, or legal periodicals.

C. The notice shall state that all qualified persons including women, members of minorities, and individuals with non-interfering handicaps are invited to apply.

Section 4.02- Posting and Distribution of Notice

A public notice that applications are being accepted for a four-year term shall be posted in the Offices of the Clerks of the Court of Appeals for the District of Columbia Circuit and the District Court. A copy of this notice shall also be provided to each District Judge and Magistrate of the Circuit, requesting that the judges recruit attorneys whom they feel are qualified for the position, including women, minority and handicapped lawyers. The Defender Services Division of the Administrative Office of the United States Courts shall also be provided with a copy of the notice for distribution to all federal courts in this nation.

Section 4.03 - Availability of Applications

The Criminal Justice Committee shall distribute Federal Public Defender application forms to the Offices of the Clerk of the Court of Appeals for the District of Columbia Circuit and the District Court.

Section 4.04 - Submission of Applications

Applications must be received by the Criminal Justice Committee by the posted deadline.

Section 4.05 - Initial Consideration of Completed Applications

After the closing date for receipt of applications, the Criminal Justice Committee shall review copies of all timely applications. If the incumbent has applied for an additional term, the Criminal Justice Act Committee shall then recommend in writing to the Court of Appeals whether a Merits Screening Committee should be appointed pursuant to Sections 5.01 and 5.02 of these procedures. A recommendation not to appoint a Merits Screening Committee shall be supported by the results of the evaluation of the Federal Public Defender as set out in Section 7.01 and after evaluating the applications received in response to the recruitment efforts. If the evaluation demonstrates that the incumbent is held in high regard for the quality of his or her performance as the Federal Public Defender, and that there are no new applicants of similar caliber, the Criminal Justice Committee may recommend that the reappointment process proceed without the appointing of a Merits Screening Committee. In the event the Court of Appeals votes by a majority not to appoint a Merits Screening Committee, the Criminal Justice Act Committee shall proceed to seek the recommendation of the District Court pursuant to Section 6.01 of these procedures.

CHAPTER 5. MERIT SCREENING COMMITTEES

Section 5.01 - Appointment of Merit Screening Committees

The Chief Judge of the Court of Appeals shall appoint a Merit Screening Committee upon the majority vote of the Court of Appeals or whenever a vacancy occurs due to the resignation, removal, or incapacity of the Federal Public Defender.

Section 5.02 - Composition of Merit Screening Committees

A. Consideration should be given by the Chief Judge of the Court of Appeals to the appointment of persons to serve on the Merit Screening Committee who possess the following experience or qualifications:

1. the president or member of the governing board of a local bar association;
2. a federal public defender or community defender from outside the district to which the defender will be appointed;
3. a prominent criminal defense lawyer who practices primarily in the federal courts, or a member of the district's Criminal Justice Act Panel, or local federal indigent defense panel;
4. the dean or associate dean of a law school, or a professor of criminal law, criminal procedure or constitutional law from such law school.

B. The Chief Judge of the Court of Appeals shall designate the Chair of the Merit Screening Committee.

C. Members of the Merit Screening Committee shall receive no compensation for their service.

Section 5.03 - Duties of Merit Screening Committee

A. The Merit Screening Committee shall examine all applications and evaluate all qualified candidates, without regard to race, color, age, gender, religion, handicap, or national origin.

B. If a Federal Public Defender has applied for an additional four-year term, the Merit Screening Committee shall consider a summary of the results of the survey conducted pursuant to Section 7.01 A. of these procedures in its evaluation of the Federal Public Defender's application.

C. The Merit Screening Committee shall determine which applicants meet the standards set forth in Chapter 2 of these procedures. The Merit Screening Committee shall interview qualified applicants.

D. Upon completion of its duties set forth in Section 5.03 A., B., and C. of these procedures, the Merit Screening Committee shall submit a report to the Chief Judge of the Court of Appeals and to the members of the Criminal Justice Committee. This report shall constitute its recommendations concerning the appointment of the Federal Public Defender in that district, and shall include the following.

1. a description of actions taken pursuant to Chapter 4 of these procedures regarding a notice of the position;

2. a brief description of the professional background of members of the Merit Screening Committee;

3. the names of all persons who submitted applications and the names of those deemed by the Merit Screening Committee to be best qualified for appointment pursuant to Chapter 2 of these procedures;

4. the results of the Merit Screening Committee's investigation into the background of the qualified candidates;

5. the names of the qualified candidates who were interviewed by the Merit Screening Committee; and

6. a preferential ranking of not less than three nor more than five persons from among those the Committee considered best qualified for appointment under Chapter 2 of these procedures. The Merit Screening Committee shall set forth the basis for its ranking of each of the three to five persons it found to be the best qualified applicants.

E. Decisions of the Merit Screening Committee shall be made by a majority vote.

F. A copy of the Merit Screening Committee's report shall be presented to the Chief Judge of the Court of Appeals and to the Chair of the Criminal Justice Committee.

CHAPTER 6.01 - DISTRICT COURT RECOMMENDATIONS

Section 6.01 - The Chair of the Criminal Justice Committee

The Chair of the Criminal Justice Committee shall send a copy of the Merit Screening Committee's report, or a copy of the written recommendation of the Criminal Justice Committee to the Court of Appeals not to appoint a Merits Screening Committee, and a summary of the results of the survey if the Federal Public Defender has applied for an additional four-year term (Section 7.01) to the Chief Judge of the District Court. The District Court should submit its written recommendation, if any, to the Criminal Justice Committee within 30 days after receipt of the above. Extensions of time may be granted

by the Chair of the Criminal Justice Committee upon application by the Chief Judge of the District Court.

Section 6.02 - Suggested Procedures for the District Court

A. The Chief Judge of the District Court may circulate to the judges of the District Court copies of the Merit Screening Committee's report, or the recommendation of the Criminal Justice Act Committee required in Section 4.05, and the summary of the results of the survey if the Federal Public Defender has applied for an additional four-year term.

B. The District Court may wish to consider the Merit Screening Committee's report, or the Criminal Justice Committee's recommendation, and the summary of the results of the survey in arriving at its recommendation. The District Court may, in its discretion, conduct its own investigations and, if a Merits Screening Committee was appointed, interview any of the applicants who have met the qualifications set forth in Chapters 2 and 4 of these procedures. Within 30 days of receipt of the summary and report and recommendation, the District Court may either:

1. submit its written recommendation(s) to the Chief Judge of the Court of Appeals and to the Chair of the Criminal Justice Committee; or
2. notify the Chief Judge of the Court of Appeals and Chair of the Criminal Justice Committee that the District Court declines to make a recommendation.

C. If the District Court decides to submit a recommendation, its report should include, as relevant:

1. a written statement of the District Court's endorsement of the

recommendations contained in the Merit Screening Committee's report; or

2. A preferential ranking of the applicants whom the District Court found to be the best qualified for appointment if different from the ranking recommended by the Merit Screening Committee. The District Court should set forth the reasons for such ranking. The District Court should consider only those applicants who applied to the Merit Screening Committee and who met the requirements of Chapter 2 and 4 of these procedures; and

3. a summary of the District Court's separate investigation of the qualified applicants, if any, and of its interviews with the qualified applicants, if any.

CHAPTER 7. COURT OF APPEALS PROCEDURES FOR THE OFFICE OF FEDERAL PUBLIC DEFENDER

Section 7.01 - The Criminal Justice Committee's Evaluation of the of the Performance of the Federal Public Defender

During the third year of each four-year term, the Criminal Justice Committee shall conduct an evaluation of the administration of the Office of the Federal Public Defender. This evaluation will be based on information received through a solicitation for public comment and a written survey. The performance of the Federal Public Defender will be evaluated in terms of the quality of representation, the level of commitment to vigorous representation and service to clients, and the administrative efficiency of the Office of the Federal Public Defender.

A. A request for public comment regarding the performance of the Federal Public Defender and his or her office will be placed in the major metropolitan or legal newspapers.

1. The identity of a respondent to the request for public comment shall not be divulged without prior consent.

B. The Criminal Justice Committee shall also conduct a written survey of the administration of the Office of the Federal Public Defender.

1. The survey should be distributed to District Court Judges and Magistrates, the Defender Services Division of the Administrative Office of the United States Courts, and other persons whose employment places them in a position to observe the performance of the Federal Public Defender, the quality of representation, the level of commitment to vigorous representation and service to clients, and administrative efficiency of the Office of the Federal Public Defender.

2. The identity of a respondent to the survey shall not be divulged without prior consent.

C. The Criminal Justice Committee may make such additional inquiry as it considers appropriate concerning the quality of services provided by the Office of the Federal Public Defender.

1. With the approval of the Chief Judge of the Court of Appeals, the Criminal Justice Committee may appoint consultants to assist it in its evaluation of the administration of the Federal Public Defender's office.

D. The Federal Public Defender shall be afforded an opportunity to review and respond to a statistical summary of the survey and a narrative summary of the responses to the request for public comment.

E. The Criminal Justice Committee should meet with the Federal Public Defender

to discuss the evaluation, if such conference is warranted by the responses to the request for public comment or the survey.

F. A summary of the responses to the request for public comment and the survey shall be provided to the Merit Screening Committee, if one was appointed, the District Court, and the Court of Appeals should the Federal Public Defender seek to be appointed for an additional four-year term.

Section 7.02 - The Criminal Justice Committee's Role in Evaluating Appointment Data

After reviewing the report of the Merit Screening Committee, if there is one, the recommendations of the District Court, and a summary of the results of the survey concerning the administration of the Office of the Federal Public Defender, if the Federal Public Defender is an applicant for appointment to an additional four-year term, the Criminal Justice Committee shall recommend one applicant to the Court of Appeals for appointment as Federal Public Defender.

The Criminal Justice Committee's recommendations shall be presented in a written report to all active Judges of the Court of Appeals.

Section 7.03 - Votes by Court of Appeals and Background Investigation on Nominee

As specifically provided below, the Court of Appeals shall first determine by majority vote whether to accept the recommendation of the Criminal Justice Committee. If the Court of Appeals accepts the recommendation of the Criminal Justice Committee, the person nominated to be Federal Public Defender shall be subjected to a Federal Bureau

of Investigation background investigation, unless the nominee is the current Federal Public Defender.

A. The Criminal Justice Committee's recommendations on the nomination to a vacancy, together with the recommendations received from the Merit Screening Committee, if one was appointed, and the District Court pursuant to Section 6.01 of these procedures, shall be presented at a regularly scheduled court meeting of the full Court of Appeals.

B. If the Criminal Justice Committee's recommendation is in accord with that submitted by the District Court, a vote of the Judges of the Court of Appeals may be conducted by mail or telephone. If any Judge of the Court of Appeals indicates a desire to discuss the appointment at a court meeting prior to voting, the vote will be conducted at a meeting of the Court of Appeals.

C. After voting to nominate a candidate to fill a vacancy,

1. the name of the nominee shall be submitted by the Chief Judge of the Court of Appeals to the Director of the Administrative Office of the United States Courts for a Federal Bureau of Investigation background investigation pursuant to United States Judicial Conference Regulations, Guidelines to Judiciary Policies and Procedures, Volume VII, Section A, Chapter 4, 4.02A, unless the nominee is the current Federal Public Defender.

2. The Administrative Office of the United States Courts shall send the completed Federal Bureau of Investigation report to the Chief Judge of the Court of Appeals, who shall refer the report to the Criminal Justice Committee on Federal

Public Defenders.

3. After reviewing the Federal Bureau of Investigation's report, the Criminal Justice Committee shall submit its recommendation to the Court of Appeals on whether the nomination should be confirmed.

D. Upon receipt of the Criminal Justice Committee's recommendation on confirmation, the Court of Appeals shall vote on whether to confirm the nomination. The confirmation vote of the Court of Appeals shall, if possible, be conducted at a regularly scheduled court meeting. Should time constraints or exceptional circumstances warrant it, this vote of the Judges of the Court of Appeals may be conducted by mail or telephone. If any Judge of the Court of Appeals indicates a desire to discuss the appointment at a court meeting prior to voting, the vote will be conducted at the next meeting of the Court of Appeals.

CHAPTER 8. MISCELLANEOUS PROCEDURES

Section 8.01 - Confidentiality

A. The identity of any person or organization providing information on a confidential basis about the incumbent Federal Public Defender, or the administration of his or her office, or on an applicant for the office, shall not be disclosed.

B. All information made available to the members of the Merit Screening Committee in the performance of their duties, including the Committee's report and the names recommended therein, shall be kept in strict confidence by the persons authorized by these procedures to receive this information, unless other provisions of these procedures or the Court of Appeals specifically authorizes disclosure.

C. Should the Criminal Justice Committee, with the consent of the Chief Judge, decide to appoint consultants pursuant to Section 7.01 B. 1. of these procedures to assist it in considering the appointment of a Federal public Defender, it may provide any confidential information to the consultants, as it considers necessary or appropriate.

Section 8.02 - Appointment to a One-Year Term

28 U.S.C. § 3006A permits the Court of Appeals to allow a Federal Public Defender whose four-year term of office has expired to continue to perform the duties of his or her office until a successor is chosen or until one year passes, whichever is earlier.

A. Extension of the Federal Public Defender's term of office must be approved by a majority of the Judges of the Court of Appeals.

B. The expiration date of the term is defined in Section 3.01 B.